

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE PUEBLO OF ISLETA, a federally-recognized Indian tribe, THE PUEBLO OF SANDIA, a federally-recognized Indian tribe, and THE PUEBLO OF TESUQUE, a federally-recognized Indian tribe,

Plaintiffs,

PUEBLO OF SANA ANA, a federally-recognized Indian tribe and PUEBLO OF SANTA CLARA, a federally-recognized Indian tribe; and

PUEBLO OF SAN FELIPE, a federally-recognized Indian tribe,

Plaintiffs-in-Intervention,

v.

No. 1:17-CV-00654-KG-KK

SUSANA MARTINEZ, in her official capacity as Governor of the State of New Mexico, JEFFREY S. LANDERS, in his official capacity as Chair of the Gaming Control Board of the State of New Mexico, RAEHELLE CAMACHO, in her official capacity as Acting State Gaming Representative, and SALVATORE MANIACI, in his official capacity as a member of the Gaming Control Board of the State of New Mexico,

Defendants.

JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on July 28, 2017, at the Rodey law firm in Albuquerque, New Mexico, and was attended by:

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NATURE OF THE CASE

This case arises from a dispute over the revenue-sharing provisions contained in the 2007 Tribal-State Class III Gaming Compacts entered into between Plaintiffs/Plaintiffs-in-Intervention (hereinafter, collectively, “Plaintiff Tribes”) and the State of New Mexico. The State, through its Gaming Control Board, whose members (along with the State’s Governor) are named Defendants in the case, has notified the Plaintiff Tribes that it believes that the Plaintiff Tribes owe the State revenue sharing payments based on the value of “free play” credits redeemed by the Plaintiff Tribes’ customers at their tribally-owned casinos, and that it intends to pursue those claims to collect the money it contends is due. Plaintiff Tribes contend that the Defendants’ position violates federal law, and seek declaratory and injunctive relief against Defendants.

Defendants deny all of the claims raised by Plaintiff Tribes and deny that Plaintiff Tribes are entitled to their requested relief.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiff Tribes intend to file: None at this time.

Plaintiff Tribes should be allowed until September 30, 2017, to move to amend the pleadings and to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

Defendants intend to file: None at this time.

Defendants should be allowed until October 31, 2017, to move to amend the pleadings and to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties are willing to further stipulate to the following facts: Those allegations of the Complaint and the Complaints-in-Intervention that are admitted in the respective Answers.

PLAINTIFF TRIBES' CONTENTIONS

Plaintiff Tribes contend that the Defendants' position, that the Plaintiff Tribes owe the State revenue sharing payments based on the value of "free play" credits redeemed at Plaintiff Tribes' casinos, violates federal law and regulations and the clear language of the Tribal-State Class III Gaming Compact entered into between the Plaintiff Tribes and the State in 2007, and that Defendants should be enjoined from pursuing those claims against the Plaintiff Tribes.

DEFENDANTS' CONTENTIONS

Defendants deny all of the claims raised by the Plaintiff Tribes and deny that the Plaintiff Tribes are entitled to their requested relief. Defendants further state that the State of New Mexico should be joined in this matter pursuant to Federal Rule of Civil Procedure 19 and/or that the State of New Mexico's claims against the Plaintiff Tribes should be consolidated with the present action. Defendants also assert those defenses set forth in their Answer.

PROVISIONAL DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan:

Plaintiff Tribes' Witnesses, Including Experts:

1. The executive director of each Plaintiff Tribe's gaming commission, each of whom would authenticate written communications between Plaintiff Tribes and Defendants:
 - a. Pueblo of Sandia: Tommy Simmons, Executive Director, Pueblo of Sandia Tribal Gaming Commission, 30 Rainbow Rd., Albuquerque, New Mexico 87113.
 - b. Pueblo of Isleta: Georgene Louis, Executive Director, Pueblo of Isleta Gaming Regulatory Agency, 11100 Broadway SE, Albuquerque, New Mexico 871105.
 - c. Pueblo of Tesuque: Jessica Baker, Executive Director, Pueblo of Tesuque Gaming Commission, P.O. Box 809, Tesuque, New Mexico 87574.
 - d. Pueblo of Santa Clara: Michael A. Ortiz, Executive Director, Santa Clara Pueblo Gaming Commission, P.O. Box 2688, Española, New Mexico 87532

- e. Pueblo of Santa Ana: Ron Montoya, Executive Director, Santa Ana Pueblo Gaming Regulatory Commission, 51 Jemez Canyon Dam Rd., Suite 103, Santa Ana Pueblo, New Mexico 87004.
 - f. Pueblo of San Felipe: Kristie Smith, Executive Director, San Felipe Pueblo Gaming Regulatory Commission, 27 Hagen Rd., San Felipe, New Mexico 87001.
2. Bruce Bleakman, 7425 Jefferson St. NE, Albuquerque, New Mexico 87109, who would provide expert testimony on the proper accounting treatment of free play under generally accepted accounting principles.

Plaintiff Tribes' Exhibits

- 1. The 2007 Tribal-State Class III Gaming Compacts between the State and the Plaintiff Tribes.
- 2. The 2015 Tribal-State Class III Gaming Compacts between the State and the Plaintiff Tribes.
- 3. Correspondence between the Plaintiff Tribes and the Defendants regarding the free play dispute beginning in April, 2017.
- 4. A draft Tribal-State Class III Gaming Compact that was negotiated between the State and the Navajo Nation in 2013.

Defendants' Witnesses, Including Experts

- 1. Current and former members of the New Mexico Gaming Control Board, each of whom may testify as to information and documents reviewed with respect to the calculation of revenue share payments, the terms of the 2007 Compact, the method of calculating revenue share following inspections permitted by the Compact,

communications with the Plaintiff Tribes regarding revenue share payments, and the authentication of these documents.

- a. Craig Telle, New Mexico Gaming Control Board, 4900 Alameda Blvd NE, Albuquerque, NM 87113.
 - b. Rainier Kamplain, New Mexico Gaming Control Board, 4900 Alameda Blvd NE, Albuquerque, NM 87113.
 - c. Raechelle Camacho, New Mexico Gaming Control Board, 4900 Alameda Blvd NE, Albuquerque, NM 87113.
 - d. Jeffrey S. Landers, New Mexico Gaming Control Board, 4900 Alameda Blvd NE, Albuquerque, NM 87113.
 - e. Paulette Becker, New Mexico Gaming Control Board, 4900 Alameda Blvd NE, Albuquerque, NM 87113.
2. Jeremiah Ritchie, formerly with the Office of the Governor of the State of New Mexico, 6001 Indian School Road NE, Suite 400, Albuquerque, NM 87110. Mr. Ritchie may testify regarding compact negotiation and specific compact provisions.
 3. Defendants are in the process of identifying expert witnesses and will disclose them as required by the Court and the applicable Federal Rules of Civil Procedure.
 4. The executive directors of each Plaintiff Tribe's gaming commission, past and present.
 5. Any witnesses listed by the Plaintiff Tribes.
 6. Any witnesses identified in discovery.
 7. Any witnesses needed to authenticate documents.
 8. Rebuttal witnesses as necessary.

Defendants' Exhibits

1. The 2007 Tribal-State Class III Gaming Compacts between the State and the Plaintiff Tribes.
2. The 2015 Tribal-State Class III Gaming Compacts between the State and the Plaintiff Tribes.
3. Correspondence between the Plaintiff Tribes and the Defendants regarding the free play dispute beginning in April, 2017.
4. Documents related to free play calculations.
5. Documents provided by the Plaintiff Tribes as part of inspections by the Office of the State Gaming Representative related to gaming activity and revenue.
6. Correspondence between the parties dating back to 2012.
7. Defendants reserve the right to introduce any documents identified by the Plaintiff Tribes and other documents and items produced in discovery.

Plaintiff Tribes contend that, other than possibly depositions of persons identified as potential witnesses, there should be little need for discovery as there are few if any material facts in dispute.

Defendants contend that discovery will be needed on all subjects related to the Complaint and the Answer.

All parties in this case will submit their Rule 26 initial disclosures by September 22, 2017.

Maximum of 25 interrogatories, including all discrete subparts, by each party to any other party. (Responses due 30 days after service).

Maximum of 25 requests for production, including all discrete subparts, by each party to any other party. (Responses due 30 days after service).

Maximum of 25 requests for admission by each party to any other party. (Response due 30 days after service).

Maximum of twelve (12) depositions by Plaintiffs/Plaintiffs-in-Intervention and twelve (12) by Defendants.

Each deposition of all parties and witnesses limited to maximum of seven (7) hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff Tribes by January 15, 2018;

from Defendants by February 15, 2018.

Supplementation under Rule 26(e) shall be due as set forth in Rule 26.

All discovery commenced in time to be completed by March 15, 2018.

Confidentiality:

All financial information and documents produced by the Plaintiff Tribes to the Defendants up to this time are Confidential pursuant to the Compact. At such time, if ever, that additional financial information is ordered to be produced in discovery, Plaintiff Tribes will request that the Court enter a Confidentiality Order.

PRETRIAL MOTIONS

Plaintiff Tribes intend to file: Motion for summary judgment and motions in limine.

Defendants intend to file: Motion for summary judgment and motions in limine.

ESTIMATED TRIAL TIME

Plaintiff Tribes expect that this case will be resolved on motions for summary judgment, and that no trial will be necessary.

Defendants estimate trial will require 5 days.

_____ This is a non-jury case.

_____ This is a jury case.

Defendants request a pretrial conference 30 days prior to trial.

SETTLEMENT

The possibility of settlement in this case is poor. The parties propose a settlement conference after dispositive motions have been filed.

EXCEPTIONS

The Defendants have demanded a jury trial. The Plaintiff Tribes do not agree that there is a right to a jury trial in this case and reserve their right to move to strike the jury demand.

APPROVED WITH/WITHOUT EXCEPTIONS

Dated: September 15, 2017

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2017, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By */s/ Krystle A. Thomas*
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